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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DR. OTTO AND LINDA SPOERL

AppellantS,

v.

CITY OF SEATTLE

Respondent.

SHB No. 79-43

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the request for review of the denial of a shoreline variance permit by the City of Seattle, having come on regularly for formal hearing on the 31st day of January, 1980 in Seattle, Washington, and appellants Dr. Otto and Linda Spoerl represented themselves and respondent, City of Seattle appearing through its assistant city attorney, Elizabeth A. Huneke with Nancy E. Curington, hearing officer presiding, and the Board having considered the exhibits, records and files herein, and having reviewed the Proposed Order of the presiding officer mailed to the parties on the 20th day of March, 1980, and more than twenty days having elapsed from said

1 service; and

2 The Board having received no exceptions to said Proposed Order and
3 the Board being fully advised in the premises; NOW THEREFORE,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
5 Order containing Findings of Fact, Conclusions of Law and Order dated
6 the 20th day of March, 1980, and incorporated by reference herein and
7 attached hereto as Exhibit A, are adopted and hereby entered as the
8 Board's Final Findings of Fact, Conclusions of Law and Order herein.

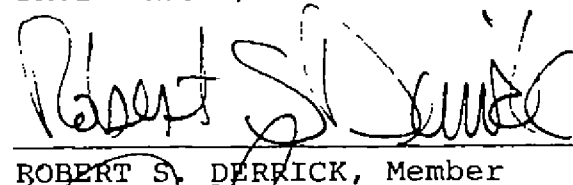
9 DATED this 5th day of May, 1980. |

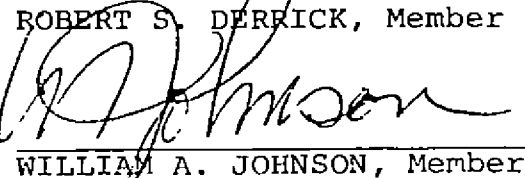
10 SHORELINES HEARINGS BOARD

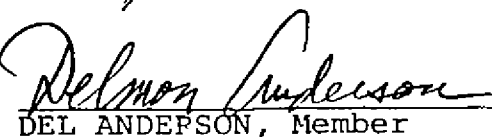
11 
12 NAT W. WASHINGTON, Chairman

13
14
15 CHRIS SMITH, Member

16 DAVID AKANA, Member

17 
18 ROBERT S. DERRICK, Member

19 
20 WILLIAM A. JOHNSON, Member

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22 DEL ANDEPSON, Member

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26
27 FINAL FINDINGS OF FACT,
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1 CERTIFICATION OF MAILING

2 I, Trish Ryan, certify that I mailed, postage prepaid, copies
3 of the foregoing document on the 5th day of May, 1980, to each
4 of the following-named parties at the last known post office
5 addresses, with the proper postage affixed to the respective
6 envelopes:

7 Dr. Otto and Linda Spoerl
8 9712 Lakeshore Boulevard NE
Seattle, WA 98115

9 Elizabeth Huneke
10 Assistant City Attorney
Seattle Municipal Building
11 600-4th Avenue
Seattle, WA 98104

12 Patricia A. Murray
13 Inslee, Best, Chapin,
Uhlman & Doezie, P.S.
14 Suite 900, ONB Plaza
10800 NE 8th
15 Bellevue, WA 98009

16 Douglas Jewett
17 Seattle City Attorney
Seattle Municipal Building
18 600-4th Avenue
Seattle, WA 98104

19
20
21 Trish Ryan
22 TRISH RYAN
23 SHORELINES HEARINGS BOARD
24
25
26

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DR. OTTO AND LINDA SPOERL

Appellants,

v.

CITY OF SEATTLE,

Respondent.

SHB No. 79-43

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of the denial of a shoreline variance permit by the City of Seattle, came before the Shorelines Hearings Board, Nat W. Washington, Chairman, Chris Smith, Robert S. Derrick, William A. Johnson and Delmon Anderson, members, in Seattle, Washington on January 31, 1980. Nancy E. Curington, hearing examiner, presided.

The appeal was originally filed by Mrs. Linda Spoerl. At the hearing, Dr. Otto Spoerl requested to be joined as a party appellant. The request was granted.

Appellants represented themselves. Respondent City of Seattle was

EXHIBIT A

1 represented by Elizabeth A. Huneke, Assistant City Attorney.

2 Having heard the testimony, having examined the exhibits, having
3 considered the parties' contentions and arguments, and being fully
4 advised, the Shorelines Hearings Board makes these

5 FINDINGS OF FACT

6 I

7 This matter arises from the denial by the City of Seattle of an
8 application by the appellants for a shoreline variance to enclose an
9 existing deck and to construct additions to the shore side of an
10 existing single-family residence on Lake Washington, a shoreline of
11 statewide significance. Appellants appealed such denial to this Board.

12 II

13 Appellants' residence is located on a lot on Lake Washington's
14 northwest shore, at 9712 Lakeshore Boulevard Northeast, Seattle.
15 Appellants' property, as well as others in the vicinity, is separated
16 from the nearest public street (Lake Shoreline Boulevard N.E.) by the
17 Burke-Gilman public trail (formerly the Burlington Northern Railway
18 right of way) and by an elevation rise to the street of approximately
19 30 vertical feet. The lots in the area are very long and narrow, and
20 partially submerged. The lot in question is approximately 40 feet
21 wide, 250 feet deep, of which approximately 125 feet is dry land.

22 The existing residence is three stories high, 2200 square feet,
23 and approximately five feet from the side lot lines. The entry and
24 walkway extend over the former railroad right of way. The easterly,
25 or shoreward, side of the house is irregular and has two separate

26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 decks; the northeast deck extends to within 15 feet of the bulkheaded
2 shoreline, and the southeast deck sits approximately 42 feet from
3 shore.

4 III

5 The neighboring properties are developed with single family
6 residences set back varying distances from the shore. The house
7 immediately to the north is set back 35 feet from the water; a deck
8 attached at the second floor level extends to within 25-1/2 feet of
9 the water. The neighboring house to the south, currently being
10 remodeled, has approximately 36 feet between the shore and the
11 midpoint of a vertical wall with sloping edge extending shoreward at
12 first floor level of the structure.

13 IV

14 Appellants' property, as well as that of the neighbors, is zoned
15 Single Family Residential High Density (RS 5000). The comprehensive
16 Plan of Seattle anticipates low density residential development of the
17 area. The Seattle Shoreline Master Program (hereinafter referred to
18 as "SSMP") designates the dry land portion of the site as Urban
19 Residential ("UR") and the submerged portion as Conservancy Management
20 ("CM").

21 V

22 Appellants propose to partially remodel all three floors of the
23 existing single family residence, by extending the shoreward face of
24 the structure towards the shoreline by adding a first floor (ground
25 level) bedroom with an overhead deck, beneath the existing northeast
26 deck, and adding a recreational room on the first floor at the

southeast side of the house. The remodeling would bring the first floor of the house to within 18 feet of the shoreline; the second and third levels of the house would remain approximately the same distance from the shoreline.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and over the subject matter of this proceeding.

II

The SSMP states, "Residential structures shall not be located closer to the shoreline than adjacent structures." (Section 21A.35(c)). The SSMP contains no definition of the phrase "adjacent structures." In Superintendent's Ruling 14-79, effective November 15, 1979 (after this variance was denied) but used by the City before that time, the City interpreted the term as referring only to "principal structures", as opposed to all structures. It then subtended a line between the nearest shoreside corners of the principal structures (excluding decks) immediately adjacent to the subject property, i.e., between the residence to the north (35 feet) and the residence to the south (36 feet), using the middle of the first floor of the sloping side of the latter structure, to obtain the setback line.

Consequently, because the proposal would extend closer to the shoreline than that line, the appellants' project requires a shoreline

PROPOSED FINDINGS OF FACT,
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1 variance.

2 III

3 The Board concludes that the language of the SSMP requires that
4 the setback line be drawn between those points where the adjacent
5 structures, including decks, are closest to the shoreline. Since the
6 proposal would extend shoreward beyond that setback line, a variance
7 is required.

8 IV

9 The SSMP requires several conditions to be met before a shorelines
10 variance will issue.¹. To meet those conditions applicants for
11

12 1. Section 21A.61 Shoreline Variances.

13 In specific cases the Director with approval of the Department
14 of Ecology may authorize variances from specific requirements of this
15 Article when there are practical difficulties or unnecessary hardships
16 in the way of carrying out the strict letter of the shoreline master
program. A shoreline variance will be granted only after the
applicant can demonstrate the following:

- 17 (a) That if he complies with the provisions of the
18 master program, he cannot make any reasonable
19 use of this property. The fact that he might
20 make a greater profit by using his property
21 in a manner contrary to the intent of the
22 program is not a sufficient reason for a variance.
23 (b) That the hardship results from the application of the
24 requirements of the Act and shoreline master
programs, and not, for example, from deed
restrictions or the applicant's own actions.
25 (c) That the variance granted will be in harmony with the
26 general purpose and intent of the shoreline master
27 program.
(d) That the public welfare and interest will be
preserved.

28 In authorizing a shoreline variance, the Director may attach
29 thereto such conditions regarding the location, character or other
30 features of a proposed structure or use as may be deemed necessary to
31 carry out the spirit and purpose of this Article and in the public
32 interest.

33 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 variances must demonstrate, among other things, that strict
2 application of the SSMP would prevent the applicants from making any
3 reasonable use of the subject property. In this case, the applicants
4 presently have the use of their property as a single family
5 residence. Under the terms of the SSMP, the applicants have not
6 demonstrated that denial of the variance would preclude any reasonable
7 use of their property. Consequently, the application for the
8 shorelines variance permit was properly denied by the City of Seattle.

9 IV

10 Any Finding of Fact which should be deemed a Conclusion of Law is
11 hereby adopted as such.

12 From these Conclusions the Shorelines Hearings Board enters this

13 ORDER

14 The denial of the application for a shorelines variance permit by
15 the City of Seattle is affirmed.

16 DATED this 20th day of March, 1980.

17 SHORELINES HEARINGS BOARD

18 Ray W. Washington
19 RAY W. WASHINGTON, Chairman

20 Chris Smith
21 CHRIS SMITH, Member

22 Robert S. Derrick
23 ROBERT S. DERRICK, Member

24 William A. Johnson
25 WILLIAM A. JOHNSON, Member

26 Delmon Anderson
27 DELMON ANDERSON, Member

PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER